

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9340 of 1992

And

SPECIAL CIVIL APPLICATION NO 3573 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SHREE PASCHIM (WESTERN)RAILWAY

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9340 of 1992
MR AV TRIVEDI for Petitioner No. 1-4
MR JC SHETH for Respondent No. 1-2
 2. Special Civil Application No. 3573 of 1993
MR HM PARIKH for petitioners
MR JC SHETH for Respondents
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CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 01/07/2003

COMMON ORAL JUDGEMENT

1. Both these petitions under Article 226 of the Constitution of India involve a common question, namely; the authority of the respondent Railway to revise licence fee and rent upwardly with retrospective effect and therefore, both these petitions are disposed of by this common judgment.

2. In Spl.C.A. No: 9340 of 1992 the Association of the vendors and stall contractors and 3 members thereof have challenged the aforesaid action of the respondent, whereas in Spl.C.A. No. 3573 of 1993 the petitioner no.2 doing the business of vending in the name of petitioner No.1 has challenged the said action of the respondent.

3. The petitioners entered into an agreement with the respondent for catering and vending business by keeping stalls/lorry of snacks, tea etc. on the railway platforms/ stations in Rajkot and Baroda Divisions respectively of Western Railway. The members and catering contractors were granted licenses for carrying their respective business, trade on the railway stations/platforms on terms & conditions of licence. The grievance of the petitioners is that the respondent called upon the vendors to pay increased license fee and rent for the period covering 1-4-1985 and 1-4-1990 and insisted upon them to pay the same with retrospective effect. It is the say of the petitioners that the respondent has no authority to increase the license fee and rent with retrospective effect in as much as the action of the respondent is not covered by any statutory authority or rule. It is also the say of the petitioners that the respondent by the impugned action have unilaterally increased license fee and rent for the period from 1-4-1985 by 3 % and 4 % with increase in rent at 11% on turn over basis illegally. It is this action of the increasing license fee and rent with retrospective effect which is challenged in the present petitions.

4. The respondent in Spl.C.A. No. 9340 of 1992 filed affidavit-in-reply contending that, by virtue of Clause-1 in the license agreement, respondent is entitled to increase the license fee retrospectively as the said clause provides for increase in the license fee as and when it is found necessary. It is also the say of the respondent that the guidelines issued by the Railway Board entitles the respondent to increase license fee and rent. It is further contended that after finalisation of revision in accordance with the guidelines individual intimations have been given to all the catering and

vending licencees and notices for payment of dues have been given. This is the justification put forth by respondent to support their action of retrospective increase in the license fee and the rent.

5. Sub clause 1 of Agreement For Stall/Table on the basis of which the impugned action is sought to be justified by the respondents, reads as under:

"1. In consideration of payment by the Licensee(s) to the Administration of the sum of Rupees as indicated below per annum payable quarterly in advance in cash or by cheque, the Administration grants to the Licensee(s) and the Licensee(s) to accept the right of selling to the travelling public at the Administration owned/Licensee(s) erected Stall/Table measuring about..... square feet vide site plan numbered attached hereto situated at station, articles as per Schedule for at tariff rates. The administration reserves the right to change the site of the Stall/Table at any later date as considered convenient for the purpose of working of the Railway.

1. Licence fee	Rs.	per annum
2. Water charges	Rs.	per annum
3. Cess charges	Rs.	per annum
4. Rent	Rs.	per annum

Total	Rs.	per annum

The above charges are subject to revision by the Administration, as and when considered necessary.

The Administration also reserves the right to change the mode of payment either in one lump sum or in installments as decided by the Administration from time to time.

The Licensee(s) also agree(s) Vendors for whom he/they will pay a licence fee of Rupees per mensem to the Administration.

The Licensee(s) also agree(s) employ not more than salesmen during working hours of the Stall/Table. "

It is pertinent to note that, clause 1 reproduced above does not suggest that the respondent is entitled to revise the license fee and rent with retrospective effect much less unilaterally. The upward revision of the license fee and rent with retrospective effect is a unilateral act of the respondent. Even taking clause 1 at its best all that could be said is, that, if during the currency of license period if the respondent finds it necessary to increase license fee and the rent, then, the same could be for the remaining period of the license, i.e. prospectively. Clause 1 cannot be construed to mean that the same empowers the respondent to increase license fee and rent with retrospective effect.

6. It may also be appreciated that, some vendors may take license for one year or two years and thereafter they may not continue the business of vending on railway station/ platforms with the license from the respondent. Vending business on the railway platforms/ station would be for the fixed period of licence and on terms & conditions contained therein. The licence fee and rent if increased retrospectively, then, as submitted by Mr. Trivedi, learned advocate for the petitioners, such vendors / licensees would not be visited with the retrospective increase in the license fee and the rent for the period for which they had the licence in past and as only those vendors who have taken/renewed the licence for the succeeding years are served with the notice of increase in licence fee and rent with retrospective effect; meaning thereby those persons who have chosen not to get/renew licenses for succeeding year/s would not be required to pay the increase in licence fee and rent for the years in which they had obtained licence and done business at railway platforms/ stations, but only such vendors are required to pay the increase in license fee and rent for the earlier years since they continued to do the business at the railway platforms/ stations by getting their licenses renewed. This would certainly be a discrimination between those who ceased to have their licences renewed after some years and those who continued to do business at railway platforms/ stations by getting licenses renewed from time to time.

7. It is not suggested from the affidavit in reply filed by the respondent railway that the action of the respondent is covered by any statutory authority or the contract between the vendors/contractors and the railway administration. It need hardly be said that, unless there is statutory provision of a specific contract there cannot be any increase in the license fee/ rent with restrospective effect and unilaterally. Whatever

increase railway authority thinks it to be necessary in the license fee and rent, as per clause 1 reproduced above, the same can only be with prospective effect, i.e. for the future period and not for the past period.

The action of the respondent of upwardly revising license fee and rent with retrospective effect is an arbitrary and illegal act and it is dehors any statutory or the contractual authority. The impugned action can be regarded as nothing but an arbitrary and illegal action on the part of the respondent.

8. Under the circumstances, I find considerable force in the submissions advanced on behalf of the petitioners challenging the action of the respondent in retrospectively increasing the licence fee and rent for the licence for vending/trading etc. at railway stations/ platforms by keeping stalls/ larries etc.

In the above view of the matter the action of the respondent cannot be sustained and the same deserves to be struck down.

9. In the result, both the petitions are allowed. The action of the respondent in increasing the license fee and rent with retrospective effect for the period 1-4-1985 and 1-4-1990 is hereby struck down and the impugned notices whereby respondent Railway Administration demanded from the petitioners increased licence fee and rent with retrospective effect for the period 1-4-1985 and 1-4-1990 are hereby quashed and set aside. Rule made absolute in both the petitions. No costs.

Dt: 1-7-2003

(N.G. Nandi, J)

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